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Attorneys for Defendants

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

| | | |
|--|---|---------------------|
| QIANG LU, |) | No. C07-4221 JCS |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| MICHAEL CHERTOFF, Secretary of the |) | ANSWER TO COMPLAINT |
| Department of Homeland Security; EMILIO |) | |
| T. GONZALEZ, Director, U.S. Citizenship |) | |
| and Immigration Services; ROBERT S. |) | |
| MUELLER, III, Director of the Federal |) | |
| Bureau of Investigation; |) | |
| ALBERTO R. GONZALES, Attorney |) | |
| General of the United States; |) | |
| CHRISTINA POULOS, Director, California |) | |
| Service Center, U.S. Citizenship and |) | |
| Immigration Services; GERARD |) | |
| HEINAUER, Director, Nebraska Service |) | |
| Center, U.S. Citizenship and Immigration |) | |
| Services, |) | |
| |) | |
| Defendants. |) | |

The Defendants hereby submit their Answer to Plaintiff's Complaint for Writ in the Nature of Mandamus.

1. Defendants admit the first sentence in Paragraph One; however, Defendants deny the allegation that they have improperly withheld action on the application for adjustment of status to Plaintiff's detriment.

ANSWER
 07-4221 JCS

PARTIES

2. Defendants admit the allegations in Paragraph Two.

3. Defendants admit the allegations in Paragraph Three.

4. Defendants admit the allegations in Paragraph Four.

5. Defendants admit the first sentence in Paragraph Five, but deny the second sentence.

6. Defendants deny the allegations in Paragraph Six. The acting Attorney General of the United States is Peter D. Keisler.

7. Defendants admit the allegations in Paragraph Seven.

8. Defendants admit the allegations in Paragraph Eight.

JURISDICTION

9. Paragraph Nine consists of Plaintiff's allegations regarding jurisdiction, to which no responsive pleading is required; however, to the extent a responsive pleading is deemed necessary, Defendants deny that this Court has jurisdiction under any of the provisions cited in Paragraph Nine.

10. Defendants deny the allegations in Paragraph Ten.

VENUE

11. Paragraph Eleven consists of Plaintiff's allegations regarding venue, to which no responsive pleading is required. Defendants aver that unless specifically provided by law, aliens have no residence in the United States for venue purposes.

INTRADISTRICT ASSIGNMENT

12. Defendants admit the allegations in Paragraph Twelve.

EXHAUSTION OF REMEDIES

13. Defendants deny that Plaintiff has exhausted his administrative remedies.

CAUSE OF ACTION

14. Defendants admit the allegations in Paragraph Fourteen.

15. Defendants admit the allegations in Paragraph Fifteen.

16. Defendants admit the first sentence in Paragraph Sixteen; however, Defendants are without sufficient information to admit or deny the remaining allegations in paragraph Sixteen, and on that basis, deny them.

17. Defendants admit the allegations in Paragraph Seventeen.

18. Defendants admit that Plaintiff's case has been transferred to the Nebraska Service Center. Defendants admit the allegations in the second sentence, but aver that any information available to the public regarding processing times refers to routine cases, not cases with pending FBI name checks.

19. Defendants deny the allegations in Paragraph Nineteen.

INJURY TO PLAINTIFF

20. Defendants deny the allegations in Paragraph Twenty.

21. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twenty-One, and on that basis, deny them.

22. Defendants admit the allegations in Paragraph Twenty-Two.

23. Defendants are without sufficient information to admit or deny the allegations in Paragraph Twenty-Three.

24. Defendants admit the first sentence in Paragraph Twenty-Four; however, Defendants are without sufficient information to admit or deny the remaining allegations in this paragraph.

PRAYER

25. Paragraph Twenty-Five consists of Plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny this paragraph.

AFFIRMATIVE AND/OR OTHER DEFENSES

All allegations not here before specifically admitted, denied, or modified are hereby denied. For further and separate answer, Defendants allege as follows:

FIRST DEFENSE

The Court lacks jurisdiction over the subject matter of this action

SECOND DEFENSE

The Complaint fails to state a claim against the Defendants upon which relief can be granted.

THIRD DEFENSE

No acts or omissions by the United States or its employees were the proximate cause of any

injury or damages to the Plaintiff.

FOURTH DEFENSE

At all times alleged in the complaint, Defendants were acting with good faith, with justification, and pursuant to authority.

FIFTH DEFENSE

The Defendants are processing the application referred to in the Complaint to the extent possible at this time. Accordingly, no relief as prayed for is warranted.

WHEREFORE, Defendants pray for relief as follows:

That judgment be entered for Defendants and against Plaintiff, dismissing Plaintiff's Complaint with prejudice; that Plaintiff takes nothing; and that the Court grant such further relief as it deems just and proper under the circumstances.

Dated: October 22, 2007

Respectfully submitted,

SCOTT N. SCHOOLS
United States Attorney

/s/

MELANIE L. PROCTOR
Assistant United States Attorney
Attorneys for Defendants